

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

Civil Action No. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

State of Montana v. Abbott Labs Inc., et al.,
D. Mont. Cause No. CV-02-09-H-DWM

**DEFENDANT ABBOTT LABORATORIES'
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant Abbott Laboratories ("Abbott"), by and through its attorneys, respectfully requests that this Court grant summary judgment in Abbott's favor on all remaining counts of Plaintiff State of Montana's Second Amended Complaint on the ground that Plaintiff's claims against Abbott fail as a matter of law. In support of this Motion, Abbott submits its Memorandum in Support of its Motion for Summary Judgment and a Local Rule 56.1 Statement of Undisputed Facts, both of which will be filed under seal.

WHEREFORE, Abbott respectfully request that the motion for summary judgment be
GRANTED

Pursuant to LR 7.1, Abbott believe that oral argument may assist the Court in resolving the issues presented in this motion and respectfully request that oral argument be heard.

Dated: February 8, 2007

Respectfully submitted,

/s/ Tonia A. Citera

Toni-Ann Citera

JONES DAY

222 East 41st Street

New York, New York 10017

Telephone: (212) 326-3939

Facsimile: (212) 755-7306

James R. Daly

Tina M. Tabacchi

JONES DAY

77 West Wacker Drive

Chicago, Illinois 60601

Telephone: (312) 782-3939

Facsimile: (312) 782-8585

Counsel for Defendant

Abbott Laboratories

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that counsel for Abbott Laboratories conferred with counsel for Plaintiff State of Montana on February 7, 2007, in a good faith effort to resolve or narrow the issues set forth herein, and counsel to the State of Montana indicated that the State of Montana does not assent to this motion.

/s/ Toni-Ann Citera

CERTIFICATE OF SERVICE

I hereby certify that on February 8 2007, I caused a true and correct copy of the foregoing **DEFENDANT ABBOTT LABORATORIES' MOTION FOR SUMMARY JUDGMENT** to be served on all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2 in MDL No. 1456, a copy to LexisNexis File and Serve for Posting and notification to all parties..

/s/ Toni A. Citra